

1
2
3
4
5
6 IN THE DISTRICT COURT OF GUAM
7

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 JOHN D. WALKER aka JON WALKER,
12 MARVIN R. REED, KENNETH R. CROWE,
and PHILLIP T. KAPP,

13 Defendants.
14

CRIMINAL CASE NO. 18-00010

REPORT & RECOMMENDATION
re Motion to Dismiss Counts One and Two
of the Indictment for Failure to Allege
Indictable Offenses (ECF No. 118)

15 Pending before the court is a Motion to Dismiss Counts One and Two of the Indictment for
16 Failure to Allege Indictable Offenses (the “Motion to Dismiss”), filed by Defendant Kenneth R.
17 Crowe. *See* ECF No. 118. The three codefendants have joined in the Motion to Dismiss. *See* ECF
18 Nos. 139, 140 and 175. The Defendants seek dismissal of Counts One and Two, asserting that the
19 Government failed to properly allege a conspiracy to defraud the United States.

20 The motion was referred to the below-signed Magistrate Judge, *see* ECF No. 149, and a
21 hearing was held on February 5, 2019. *See* Minutes, ECF No. 197. After having reviewed the
22 motion and supporting memoranda, the United States’ opposition and the reply thereto, and having
23 considered the arguments by the parties, the court hereby issues its decision in this Report and
24 Recommendation.

25 **BACKGROUND**

26 On May 30, 2018, the grand jury issued a multi-count Indictment charging the Defendants
27 with participating in a scheme to “circumvent[] U.S. aviation safety regulations for the purpose of
28 reducing costs and maximizing the profits of Hansen Helicopters, Inc.” (“Hansen Helicopters” or

“Hansen”). Indictment at ¶17, ECF No. 1. The Indictment further asserted that

[t]he scheme involved, among other things, obtaining aircraft that had been previously de-registered because they were destroyed, scrapped, or otherwise deemed not airworthy; then falsifying, concealing material facts, or making materially fraudulent representations in entries, certifications, documents, and records submitted to government agencies to obtain Airworthiness Certificates for those same aircrafts.

The scheme also involved creating false logbook entries, switching data plates from their associated aircraft or aircraft parts to non-associated aircraft of [sic] aircraft parts, and taking other measures to conceal the background, maintenance histories, and airworthiness of aircraft flown by Hansen.

The scheme also involved the use of non-FAA certified parts that were installed into aircraft flown by Hansen.

Id. at ¶¶18-20.

The Indictment charged the Defendants with committing various offenses, but at issue here are the first two counts of the Indictment asserting a violation of Section 371 of Title 18, United States Code. Count One specifically charged the Defendants with Conspiracy to Defraud the National Transportation Safety Board (“NTSB”) and the Federal Aviation Administration (“FAA”) with regard to a Hansen aircraft bearing the tail number N9068F, which crashed on September 2, 2015. *See* Indictment, at ¶23, ECF No. 1. Count Two charged the Defendants with Conspiracy to Defraud the FAA as to a Hansen aircraft bearing the tail number N243D. *Id.* at ¶30.

On August 21, 2018, Defendant Crowe filed the instant motion seeking to dismiss Counts One and Two of the Indictment. *See* Mot. Dismiss, ECF No. 118. Defendant Crowe primarily claimed that the Indictment failed to set forth the facts and law necessary to sufficiently charge a conspiracy to defraud the United States.

On September 6, 2018, the United States filed an Opposition to the Motion to Dismiss. *See* Gov’t Opp’n, ECF No. 141.

On September 14, 2018, Defendant Crowe filed a Reply to the Government’s Opposition. *See* Reply Br., ECF No. 142.

LEGAL STANDARD

Rule 7(c)(1) requires that an indictment be a “plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1). The Supreme Court in *Russell v. United States* held that a legally sufficient indictment must state the elements of an

1 offense charged with sufficient clarity to apprise a defendant of what to defend against. 369 U.S.
2 749, 763-64 (1962). “An indictment is sufficient if it contains the elements of the charged crime in
3 adequate detail to inform the defendant of the charge and to enable him to plead double jeopardy.”
4 *United States v. Buckley*, 689 F.2d 893, 896 (9th Cir. 1982), *cert. denied*, 460 U.S. 1086 (1983).
5 “[T]he issue in judging the sufficiency of the indictment is . . . not whether the Government can
6 prove its case.” *Id.* at 897.

7 In deciding a motion to dismiss, the court must take the allegations of the indictment as true.
8 *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 343 n.16 (1952); *United States v. Afshari*,
9 426 F.3d 1150, 1153 (9th Cir. 2005). An indictment need not allege the government’s theory of the
10 case or supporting evidence, but it must state the essential facts necessary to apprise the defendant
11 of the crime charged. *Id.* “An indictment must be read in its entirety and construed in accord with
12 common sense and practicality.” *United States v. Alber*, 56 F.3d 1106, 1111 (9th Cir. 1995).

13 ANALYSIS

14 Defendant Crowe raises various arguments in the Motion to Dismiss Counts One and Two:
15 (1) the Indictment failed to allege the necessary elements of the offense; (2) the Government should
16 be precluded from going forward with Counts One and Two under the defraud clause when a more
17 specific statute is available to be charged; and (3) the Government failed to establish that the NTSB
18 is an agency of the United States.¹ The court opts to address these arguments in reverse order.

19 1. Whether the NTSB is an agency of the United States

20 The Motion to Dismiss asserts that “the elements of conspiracy to defraud the United States
21 require the [G]overnment to prove that the [D]efendants conspired to impede and impair the
22

23 ¹ At the February 5th hearing, Mr. McConwell, counsel for Defendant Kapp, argued for the
24 first time that the Indictment was also deficient because it failed to allege that the FAA had
25 jurisdiction over the aircrafts that are the subject of Counts One and Two. This issue was never
26 raised in the underlying motion, in the Reply brief, or in any of the joinders filed by the
27 codefendants. Counsel offered no explanation for failing to raise the argument in earlier briefings
28 filed with the court, and the court believes it is unfair to now consider the issue since the
Government has not had the opportunity to brief the matter. Accordingly, the court deems the
argument waived. *See Greene v. Wal-Mart Stores, Inc.*, No. 2:15-CV-00677-JAD-NJK, 2016 WL
829981, at *3 (D. Nev. Jan. 26, 2016) (citing *Harger v. Dep’t of Labor*, 569 F.3d 898, 904 n.9 (9th
Cir. 2009).

1 operations of a specific government agency.” Mot. Dismiss at 13, ECF No. 118. The Defendants
2 then argue that because the NTSB is “strictly an investigating entity” with “no regulatory or
3 enforcement authority,” Count One should be dismissed because the Government “failed to allege
4 facts establishing that the NTSB constitutes a government agency within the meaning of
5 Section 371.” *Id.*

6 Despite the Defendants’ contentions, it appears clear to the court that the NTSB is a
7 government agency within the meaning of Section 371. In its entirety, Section 371 provides:

8 If two or more persons conspire either to commit any offense against the United
9 States, or to defraud the United States, or any agency thereof in any manner or for
10 any purpose, and one or more of such persons do any act to effect the object of the
11 conspiracy, each shall be fined under this title or imprisoned not more than five years,
12 or both.

13 If, however, the offense, the commission of which is the object of the conspiracy,
14 is a misdemeanor only, the punishment for such conspiracy shall not exceed the
15 maximum punishment provided for such misdemeanor.

16 18 U.S.C. § 371.

17 Nothing in the language of Section 371 or the Ninth Circuit’s Model Criminal Instruction
18 8.21 requires that the federal agency alleged to have been defrauded to have regulatory and
19 enforcement authority. The statute and the model instruction merely require that the United States
20 or “any agency thereof” be defrauded.

21 Here, the Indictment asserts that the NTSB “is an independent federal agency charged with
22 investigating civil aviation accidents in the United States, among other duties.” Indictment at ¶9,
23 ECF No. 1. As noted above, the court must accept this allegation as true. *Boyce Motor Lines*, 342
24 U.S. at 343 n.16. This allegation is consistent with federal law which created the NTSB as an
25 “independent establishment of the United States Government” charged with “investigat[ing] and
26 report[ing] on accidents involving . . . modes of transportation,” including aviation accidents. 49
27 U.S.C. § 1111(a) and (g). *See also World Airways, Inc. V. Int’l Bhd. of Teamsters, Airline Div.*, 578
28 F.2d 800, 803 n.7 (9th Cir. 1978) (“The NTSB was created in 1966 as an agency within the
Department of Transportation, but since 1975 has been an independent agency of the United
States.”); *Lahr v. Nat’l Transp. Safety Bd.*, 453 F. Supp.2d 1153, 1162 (C. D. Cal. 2006) (The NTSB
“is an independent federal agency charged with investigating civil aviation accidents in the United

1 States. . . . The NTSB conducts investigations in order to determine the circumstances relating to
2 and the probable causes of accidents and to make safety recommendations that are intended ‘to
3 prevent similar accidents or incidents in the future.’”). Accordingly, the court recommends that the
4 Chief Judge deny the Defendants’ request to dismiss Count One since the Indictment sufficiently
5 alleges facts establishing that the NTSB constitutes a government agency within the meaning of
6 Section 371.

7 2. Whether the Government should have charged the more specific offense of making false
8 statements under 18 U.S.C. § 1001

9 The Motion to Dismiss next argues that because a more substantive statute – specifically
10 False Statement to Government Agency under 18 U.S.C. § 1001 – is available to be charged under
11 the offense clause of Section 371, the Government’s use of the defraud clause is improper, and the
12 court should “grant the motion to dismiss and thereby preclude the [G]overnment from proceeding
13 with a prosecution of the [D]efendants under the defraud clause.” Mot. Dismiss at 11, ECF No. 118.

14 The court declines the Defendants’ invitation to hamper the Government’s prosecutorial
15 discretion. The court is mindful of its role in our tripartite form of government and the doctrine of
16 separation of powers, which reserves the decision of whether to prosecute with members of the
17 executive branch charged with prosecutorial functions. *United States v. Edmonson*, 792 F.2d 1492,
18 1497 (9th Cir. 1986). “The discretion to prosecute carries with it the discretion to choose the statute
19 that will be charged” and where, as here, “conduct violates more than one criminal statute[,] the
20 [G]overnment may generally elect which statute it wishes to charge.” *Id.* The court notes that the
21 disjunctive “or” is used to separate the “offense clause” in Section 371 from the “defraud clause,”
22 giving a prosecutor the option to charge either if the facts support such a charge. While it may be
23 true that the Government could have also charged the Defendants with a violation of Section 1001
24 instead of a violation of the defraud clause of Section 371, it is well settled that when conduct
25 violates more than one criminal statute, the Government may choose which statute it will apply.
26 *United States v. Batchelder*, 442 U.S. 114, 124-25 (1979). The Government was within its discretion
27 when it decided to prosecute the Defendants under the general defraud clause of Section 371, and
28 the court would be overstepping its authority if it granted the Defendants’ Motion to Dismiss simply

1 because the Defendants believe it would have been more appropriate for the Government to charge
2 them with another criminal offense.

3 The Motion to Dismiss cites to the Sixth Circuit's decision in *United States v. Minarik*, 875
4 F.2d 1186 (6th Cir. 1989), to support the Defendants' assertion that the Government should be
5 precluded from prosecuting a defraud charge when a more specific statute is available. In *Minarik*,
6 one of the defendants had been issued a tax assessment. *Id.* at 1187. The defendant responded that
7 she did not owe the tax. *Id.* The defendant then arranged to sell a house she owned and received the
8 payment by seven installment checks of less than \$5,000 each. *Id.* When she tried to cash the
9 checks, the bank contacted the Internal Revenue Service ("IRS") and she was arrested for violating
10 the Bank Secrecy Act, which required the filing of a report with the IRS for any transaction over
11 \$10,000. *Id.* at 1188. The defendant was charged under section 371 for conspiring to defraud the
12 government by concealing from the government the nature of and income from a business. *Id.* The
13 indictment did not make clear what function of the government the defendants were impeding, and
14 the government's theory of the case evolved throughout the period from the return of the indictment
15 through the trial. *Id.* at 1188-89. The *Minarik* court noted that the defendant properly could have
16 been charged under § 7206(4) of the Internal Revenue Code, which makes it a felony to conceal any
17 goods or commodities on which a tax or levy has been imposed. *Id.* at 1191. The *Minarik* court,
18 therefore, found that the facts proved a conspiracy under the "offense" clause of § 371 for violating
19 § 7206(4) not the "defraud" clause as the indictment indicated and therefore dismissed the
20 indictment. *Minarik* explained that the purpose of the "defraud" section of § 371 "was to reach
21 conduct not covered elsewhere in the criminal code" and should not be used when a specific
22 provision covers that conduct. 875 F.2d at 1194.

23 Several circuits, including subsequent Sixth Circuit cases, have distinguished or limited the
24 holding of *Minarik*. See *United States v. Hurley*, 957 F.2d 1, 3-4 (1st Cir.), *cert. denied*, 506 U.S.
25 817 (1992) ("*Minarik*'s holding has been narrowly limited to the facts of that case[.]" Unlike the
26 *Minarik* conspiracy whose "object was explicitly proscribed by a particular statute, . . . the
27 government alleges defendants participated in a longstanding and wide-ranging scheme to deceive
28 the IRS regarding the amount and source of assets."); *United States v. Notch*, 939 F.2d 895, 900-01

(10th Cir.1991) (indictment under defraud clause proper where conduct broader than specific statutory provision); *United States v. Bilzerian*, 926 F.2d 1285, 1302 (2d Cir.), *cert. denied*, 502 U.S. 813 (1991) (same); *United States v. Sturman*, 951 F.2d 1466 (6th Cir. 1991), *cert denied*, 504 U.S. 985 (1992) (conspiracy involved many events and no single provision of the tax code covered the totality and scope of the conspiracy); *United States v. Mohnney*, 949 F.2d 899, 903 (6th Cir. 1991) (“*Minarik* . . . created a limited rule to remedy the particular concerns raised by the facts of that case”). Similar to these cases, the broad nature of the conspiracies charged in Counts One and Two and the associated violation of several regulations distinguishes the instant case from *Minarik*. Accordingly, the court declines to apply *Minarik*’s holding to the facts of this case.

3. Whether the Indictment sufficiently pleads conspiracies to defraud the United States

The main argument raised in the Motion to Dismiss is that Counts One and Two of the Indictment “conspicuously lack any allegation that the [D]efendants conspired to defraud the United States by ‘impeding, impairing, obstructing, and defeating’ the NTSB and FAA.” Mot. Dismiss at 8, ECF No. 118. The Defendants contend that the words “impede, obstruct or influence” appear for the first time in paragraph 55 of the Indictment with regard to Counts 17-19, charging Destruction, Alteration, or Falsification of Records, but the terms “impair” and “defeat” do not appear at all in the Indictment. *Id.* at 8-9. The Defendants assert that these deficiencies render Counts One and Two “legally defective” because it is “unclear . . . whether or not the [G]overnment claims that the FAA or NTSB was impeded, hindered or impaired in the performance of its function, as is required in a defraud clause conspiracy.” *Id.* at 10.

As stated previously, a legally sufficient indictment must state the elements of the alleged crime in adequate detail to apprise a defendant of the charge. *Russell*, 369 U.S. at 763-64; *Buckley*, 689 F.2d at 896.

Here, Counts One and Two charge the Defendants with conspiring to defraud the FAA and NTSB, in violation of Section 371. The Ninth Circuit has described the elements of this offense as follows: “To convict someone under 18 U.S.C. § 371 the government need only show (1) he entered into an agreement (2) to obstruct a lawful function of the government (3) by deceitful or dishonest means and (4) at least one overt act in furtherance of the conspiracy.” *United States v. Caldwell*, 989

1 F.2d 1056, 1059 (9th Cir. 1993). This is consistent with the elements of the offense as set forth in
2 Model Instruction 8.21 of the Ninth Circuit’s Manual of Model Criminal Jury Instructions, which
3 states that the Government must prove the following elements beyond a reasonable doubt:

4 First, beginning on or about [date], and ending on or about [date], there was an
5 agreement between two or more persons to defraud the United States by obstructing
6 the lawful functions of [specify government agency] by deceitful or dishonest means
7 as charged in the indictment;

8 Second, the defendant became a member of the conspiracy knowing of at least one
9 of its objects and intending to help accomplish it; and

10 Third, one of the members of the conspiracy performed at least one overt act [on or
11 after [date]] for the purpose of carrying out the conspiracy, with all of you agreeing
12 on a particular overt act that you find was committed.

13 Ninth Circuit Model Criminal Instruction 8.21 (Conspiracy to Defraud the United States).

14 Neither the *Caldwell* case nor the model instruction utilize the words “impede,” “hinder” or
15 “impair.” Instead the Ninth Circuit case and instruction require that a defendant “obstruct” a lawful
16 function of a government agency by “deceitful or dishonest means.”

17 In this case, the Indictment sets forth 21 paragraphs in the “Introduction” section, which are
18 thereafter incorporated by reference into Counts One and Two. In relevant part, these paragraphs
19 describe the FAA and NTSB functions as follows:

20 1. The Federal Aviation Administration (FAA) is an agency fo the United States
21 within the Department of Transportation The primary concern of the FAA with
22 regards to civilian aviation matters is safety. Federal Aviation Regulations (FAR) . . .
23 are enforced by the FAA.

24 2. The FAA regulates the registration of aircraft in the United States. . . .
25 . . .

26 4. The FAA also issues Airworthiness Certificates, an FAA document which
27 grants authorization to operate an aircraft in flight.

28 5. To obtain an FAA Airworthiness Certificate, the registered owner or owner’s
agent must submit an FAA Form 8130-7 (for a Special Airworthiness Certificate) or
an FAA Form 8130-6 (for a Standard Airworthiness Certificate) to the FAA. The
FAA may then issue the relevant Airworthiness Certificate if it determines the
aircraft is eligible and in a condition for safe operation.

6. FAA Aviation Safety Inspectors (ASI) administer, investigate, and enforce
FAA safety regulations and standards for the production, operation, maintenance, and
modification of all aircraft. ASIs are authorized to issue FAA airworthiness
certificates.

7. FAR titled “Identification and Registration Marking,” requires certain aircraft
to attach a fireproof identification plate, commonly referred to as a “data plate,”
which provides information about the aircraft. . . . The FAA uses data plates to track
aircraft parts and to maintain accountability of those parts.

8. FAR also require that each aircraft have a unique set of logbooks that
document historical data dating back to the manufacturing date of the aircraft. These

1 logbooks must be complete and kept current. Logbooks are used by FAA certified
2 aircraft mechanics and FAA certified repair stations in performing maintenance and
repairs on aircraft.

3 9. The National Transportation Safety Board (NTSB) is an independent federal
agency charged with investigating civil aviation accidents in the United States,
4 among other duties. The NTSB conducts investigations to determine the probable
cause of transportation accidents and to formulate safety recommendations.

5 10. Federal regulations require operators to notify the NTSB immediately of
aviation accidents and certain incidents. . . .

6 11. NTSB regulations require that “[t]he operator of an aircraft involved in an
accident or incident for which notification must be given is responsible for preserving
7 to the extent possible any aircraft wreckage, cargo, and mail aboard the aircraft, and
all records, including all recording mediums of flight, maintenance, and voice
8 recorders, pertaining to the operation and maintenance of the aircraft and to the
airmen until the Board takes custody thereof or a release is granted.” . . .

9 12. NTSB regulations also require that “[t]he operator of an aircraft involved in
an accident or incident shall retain all records, reports, internal documents, and
10 memoranda dealing with the accident or incident, until authorized by the Board to the
contrary.” . . .

11 Indictment at ¶¶1-12, ECF No. 1.

12 The Indictment goes on to describe the Defendants’ scheme to obstruct or circumvent the
13 aviation regulations applicable to or enforced by the FAA and the NTSB:

14 17. Beginning as early as 1997, but no later than February 15, 2012, . . .
defendants knowingly and willfully circumvented U.S. aviation safety regulations[.]

15 18. The scheme involved, among other things, obtaining aircraft that had been
previously de-registered because they were destroyed, scrapped, or otherwise deemed
16 not airworthy; then falsifying, concealing material facts, or making materially
fraudulent representations in entries, certifications, documents, and records submitted
17 to government agencies to obtain Airworthiness Certificates for those same aircraft.

18 19. The scheme also involved creating false logbook entries, switching data plates
from their associated aircraft or aircraft parts to non-associated aircraft [or] aircraft
19 parts, and taking other measures to conceal the background, maintenance histories,
and airworthiness of aircraft flown by Hansen.

20 *Id.* at ¶¶17-19.

21 Specifically as to Count One, the Indictment alleges that with regard to the Hansen aircraft
22 that crashed on September 2, 2015, the Defendants “knowingly and willfully combine, conspire,
23 confederate and agree together to defraud agencies of the United States, namely the NTSB and the
24 FAA[.]” *Id.* at 23. This was accomplished by the commission of several overt acts, including
25 Defendant Kapp making entries into aircraft N9068F’s records on or about September 10, 2015,
26 “documenting that he had performed the necessary inspections and maintenance” on said aircraft
27 “when in fact [he] had not performed the stated inspections or maintenance.” *Id.* at ¶25. Defendant
28 Kapp provided these false logbook entries to Defendant Crowe, who thereafter submitted the false

1 logbook entries to the FAA and the NTSB. *Id.* at ¶¶26-28. This is sufficient to satisfy the element
2 requiring a deceitful or dishonest means, since the Government is not merely criminalizing the
3 innocent act of providing inaccurate information to federal agencies, but rather prosecuting the
4 knowing act of misrepresenting to the FAA and the NTSB that the necessary inspections and
5 maintenance on Hansen aircraft N9068F had been performed when in fact they had not. These
6 knowing misrepresentations obstructed the lawful functions of the FAA, which is charged with
7 enforcing various Federal Aviation Regulations with regard to safety, and the NTSB, who would
8 conduct the subsequent investigation to determine the probable cause of the crash involving said
9 aircraft. Reading all these paragraphs in their entirety and construing them in accord with common
10 sense and practicality, the court finds that the Indictment alleges the essential elements with
11 sufficient specificity as to inform the Defendants of the charge and to prepare an adequate defense
12 thereto.

13 With regard to Count Two, the Indictment alleged that the Defendants “did knowingly and
14 willfully combine, conspire, confederate and agree together to defraud” the FAA with regard to
15 Hansen aircraft bearing the tail number N243D. *Id.* at ¶30. The overt acts related to Count Two
16 assert that on or about February 15, 2012, Defendant Walker submitted to the FAA an application
17 to register said aircraft, which included an FAA Form 8050-2 (Aircraft Bill of Sale) that contained
18 a “forged signature”; that on or about June 24, 2012, Defendant Kapp created a maintenance
19 logbook entry for said aircraft reflecting completion of a hard landing inspection, when no such
20 inspection was performed on N243D; that on or about December 10, 2012, Defendant Crowe
21 submitted to the FAA photographs of a helicopter that he misrepresented as N243D; that on the same
22 date Defendant Crowe submitted to the FAA Defendant Kapp’s June 24, 2012 maintenance logbook
23 entry for the aircraft which falsely indicated completion of the hard landing inspection; and that on
24 or about December 21, 2015, Defendant Kapp sent an email to a Hansen employee directing him to
25 swap out “number” and “tags” for three aircraft, one of which was N243D. *Id.* at ¶¶31-36. Again,
26 reading these paragraphs in their entirety and construing them in accord with common sense and
27 practicality, the Indictment asserts sufficient facts to conclude that the Defendants conspired to
28 obstruct the FAA’s lawful function of administering, investigating and enforcing FAA safety

regulations and standards with regard to maintaining accurate logbooks. The court finds that Count Two of the Indictment alleges the essential elements with sufficient specificity as to inform the Defendants of the charge against them and to prepare for trial accordingly.

In addition to the claim that the Indictment is deficient because it fails to allege the Defendants conspired to impeded or impair the lawful functions of the two federal agencies, the Motion to Dismiss also argues that the Counts One and Two are “fatally defective” because they “fail to allege the requisite intent to defraud.” Mot. Dismiss at 12, ECF No. 118. However, as discussed above, the Indictment sufficiently alleges that the Defendants employed deceitful or dishonest means to obstruct the functions of the FAA and the NTSB. The Defendant are alleged to have submitted logbooks or reports knowing that said logbooks or reports contained false information. This is sufficient to satisfy the requisite intent to defraud. Accordingly, the court recommends that the Chief Judge deny the request to dismiss Counts One and Two.

CONCLUSION

Based on the above analysis, after reading the Indictment in its entirety and construing it in accord with common sense and practicality, the court finds that the Indictment sufficiently alleges the necessary elements of an offense under the defraud clause of Section 371 to permit the preparation of an adequate defense. Accordingly, the court recommends that the Chief Judge deny the Motion to Dismiss it its entirety.

IT IS SO RECOMMENDED.



/s/ Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge
Dated: Feb 26, 2019

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).